

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

CHRISTINE MOSE	§	
	§	
	§	
V.	§	CASE NO. 4:11-CV-613
	§	Judge Clark/Judge Mazzant
OCWEN LOAN SERVICING, LLC, and	§	
U.S. BANK NATIONAL ASSOCIATION,	§	
IN ITS CAPACITY AS TRUSTEE FOR	§	
THE REGISTERED HOLDERS OF	§	
AEGIS ASSET BACKED SECURITIES	§	
TRUST 2005-1, MORTGAGE BACKED	§	
NOTES	§	

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On November 20, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that defendants' Motion for Summary Judgment [Doc. #21] be denied. On November 29, 2012, defendants filed objections to the report [Doc. #27].

Defendants object that the Magistrate Judge erred in not addressing whether plaintiff has standing to challenge the assignments of the deed of trust. The court has held in the past that the borrower does not have standing to challenge the assignments because the borrower was not a party to those contracts. However, even if plaintiff cannot challenge the fact that her loan was assigned, she can challenge whether the party that received the assignment is the party that is seeking to enforce the note and deed of trust. That is exactly what plaintiff did in this case, in response to the motion for summary judgment. Plaintiff asserted that the deficiencies in defendants' summary

judgment evidence that showed that plaintiff's loan in question was not transferred to defendants.

The Magistrate Judge pointed out that in defendants' reply, they failed to respond to this argument, resulting in a denial of the motion for summary judgment. The Magistrate Judge committed no error.

Now defendants attempt to correct the evidentiary mistake by attaching to the objections the correct assignment. The court rejects defendants' late attempt. Defendants had the opportunity to address this in their reply and seek leave by the Magistrate Judge to supplement the summary judgment record. Defendants failed to do that and ignored the arguments being made by plaintiff. The court finds that defendants had the opportunity to present a proper motion for summary judgment and failed in that effort. This case can proceed to trial.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by defendants, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that defendants' Motion for Summary Judgment [Doc. #21] is DENIED.

So **ORDERED** and **SIGNED** this 3 day of **January, 2013**.



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Ron Clark, United States District Judge